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September 12, 2014

BY ECF

Hon. John G. Koeltl  
United States District Court for the  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

Re: **Schutte Bagclosures Inc. v. Kwik Lok Corporation (No. 1:12-cv-05541-JGK)**

Dear Judge Koeltl:

As requested during oral argument yesterday concerning Kwik Lok Corporation's Motion for Summary Judgment, Kwik Lok clarifies below the Counterclaims it would continue to assert if the Court grants Kwik Lok's motion for summary judgment seeking dismissal of (1) Counts 1 and 2 of the Second Amended Complaint with respect to all the Schutte Products (except the Clips G Series products); and (2) Counts of 1, 2 and 3 of the Second Amended Complaint with respect to all claims asserted against United States Trademark Registration No. 1,975,545:<sup>1</sup>

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<sup>1</sup> Schutte Bagclosures, Inc. ("Schutte") has stipulated to dismissal of Counts 1 and 2 with respect to the '804 Registration and Count 4 of the Second Amended Complaint. See Stipulation of Dismissal submitted by email to [judgments@nysd.uscourts.gov](mailto:judgments@nysd.uscourts.gov) on June 20, 2014. Similarly, in its opposition to Kwik Lok's Motion for Summary Judgment, Schutte conceded that it would not contest Kwik Lok's Motion for Summary Judgment seeking dismissal of Schutte's false advertising claims - Counts 5 and 6 of the Second Amended Complaint.

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First Claim for Relief – Federal Trade Dress Infringement (15 U.S.C. §1114(1))<sup>2</sup>

Kwik Lok would continue to maintain its claim for federal trade dress infringement based on its exclusive rights in the '043 Product Configuration solely against Schutte's Clipps G Series products under 15 U.S.C. §1114(1). Kwik Lok would not maintain any other claims for federal trade dress infringement based on its rights in either the '043 Product Configuration or the '545 Product Configuration against any other Schutte products.

Second Claim for Relief – Federal Trade Dress Unfair Competition (15 U.S.C. §1125(a))

Kwik Lok would continue to maintain its claims for federal unfair competition based on its exclusive rights in the Beveled and Notched KWIK LOK Product Configuration against Schutte's Clipps G Series products under 15 U.S.C. §1125(a). Kwik Lok would not assert any other claims for federal unfair competition based on its rights in any of the other unregistered product configurations (including, the Beveled Rectangle KWIK LOK Product Configuration, the Beveled Long Rectangle KWIK LOK Product Configuration or the Beveled Skinny Long Rectangle KWIK LOK Product Configuration) against any other Schutte products.

Third Claim for Relief – Federal Trade Dress Dilution (15 U.S.C. §1125(c)(1))

Kwik Lok would continue to maintain its claim for federal dilution based on its exclusive rights in the '043 Product Configuration solely against the Clipps G Series products under 15 U.S.C. §1125(c)(1). Kwik Lok would not assert any other claims for federal dilution based on either the '043 Product Configuration or the '545 Product Configuration against any other Schutte products.

Fourth Claim for Relief – Common Law Unfair Competition

Kwik Lok would continue to maintain its claim for common law unfair competition based on its exclusive rights in the '043 Product Configuration and the Beveled and Notched KWIK LOK Product Configuration solely against Schutte's Clipps G Series products. Kwik Lok would not assert the '545 Product Configuration or the other unregistered product configurations (including, the Beveled Rectangle KWIK LOK Product Configuration, the Beveled Long Rectangle KWIK LOK Product Configuration or the Beveled Skinny Long Rectangle KWIK LOK Product Configuration) against any other Schutte products.

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<sup>2</sup> All terminology and defined terms used herein has the same meaning as set forth in Kwik Lok's Second Amended Answer, Affirmative Defenses and Counterclaims (Dkt. 47).

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Fifth Claim for Relief – Dilution and Injury to Business Reputation (N.Y. General Business Law §360-1)

Kwik Lok would continue to maintain its claims for dilution and injury to business reputation under New York law based on its exclusive rights in the '043 Product Configuration solely against Schutte's Clipps G Series products. Kwik Lok would not assert any claims for dilution and injury to business reputation based on its rights in the '043 Product Configuration or the '545 Product Configuration against any other Schutte products.

We thank Your Honor for your consideration of this matter.

Respectfully submitted,



Brian McQuillen

cc: Carl Van Der Zandt, Esq. (via ECF)  
Sherli Yeroushalmi (via ECF)